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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 496

LAWYERS COUNTY TRUST COMPANY,
Petitioner,

v.

WILLIAM REICHERT AND PAUL KOLLMAR, INDIVIDUALLY AND AS CO-PARTNERS TRADING UNDER THE NAME OF W. REICHERT & CO., Bankrupts.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE PETITIONER.

HOWARD MYERS,
JOSEPH K. GUERIN,
SAUL S. MYERS,
Counsel for Petitioner.

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Opinions of the Courts Below.

No opinion was rendered in the District Court by Judge Goddard in granting the one-day extension of time to file specifications (R. 63). The opinion of Judge Patterson in the District Court, granting the motion to strike the specifications and granting an order of discharge, is not reported but appears in the record at pp. 66-67.

The opinion of the Circuit Court of Appeals affirming the order of Judge Patterson is reported in 73 F. (2d) 56, and appears in the record at pp. 73-76.

Jurisdiction.

The date of the order to be reviewed is August 24, 1934 (R. 76). The petition for writ of certiorari was filed and the case docketed in this Court on October 26, 1934. Writ of certiorari was granted on December 3, 1934.

The specific claims advanced and rulings made in the lower courts, which are relied upon as the basis for review by this Court, are briefly set out in the Statement of the Case, *post,* and, in the interest of brevity, they are not repeated here.

The jurisdiction of this Court is invoked under Sec. 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 938, 28 USC 347a), and is believed to be clear.

Moore v. *Bay,* 284 U. S. 4;
Cooper v. *Dasher,* 290 U. S. 106.

Question Presented.

April 17, 1933, this Court amended General Order XXXII in Bankruptcy (289 U. S. 619, 632). The scope of the amendment is shown by the following text of the order, in which the language deleted by the 1933 amendment appears in brackets, and the language added appears in italics:

"XXXII

"Opposition to Discharge or Composition *or Extension.*

"A creditor opposing [the] *an* application [of a bankrupt] for [his] discharge, or for the confirmation of a composition *or extension proposal,* shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall *at the same time* file a specification in writing of the grounds of his opposition [within ten days thereafter, unless the time shall be shortened or enlarged by special order of the judge]."

The sole question in this case is whether this amendment puts it altogether beyond the power of the Bankruptcy Court to grant an extension of time within which a creditor opposing discharge may file his written specifications of

the grounds of his opposition, where such creditor duly appears on the return day and enters his appearance, objects to the discharge, and shows good cause for such an extension. The decisions of the lower Federal courts are not in agreement upon this question,[1] which is now presented to this Court for the first time.

Statement of the Case.

In this bankruptcy proceeding an order had been duly entered requiring creditors to show cause on a day certain why a discharge should not be granted to the present respondents. On that day this petitioner duly appeared by counsel, as a creditor objecting to the discharge, and filed a written Notice of Appearance in Opposition. Thereafter, on the same day, while the court was still in session, counsel for petitioner represented to the court that the grounds of opposition had but recently come to light; that the charges against the bankrupts were so serious that authorization for executing and filing written specifications should first be given by the president of petitioner, who had just left the hospital where he had undergone a serious operation (R. 65). On this statement, the court

[1] In *In re Corcoran*, 4 Fed. Supp. 988 (D. C. U. S., Mass.), it was held that the amended General Order took from the court all power to allow extension of time, and in *In re Hodges*, 4 Fed. Supp. 804 (D. C. U. S., Conn.), it was held that the order put it beyond the power of the court to allow the filing of the specifications after the return day. The latter decision was affirmed by the Circuit Court of Appeals for the Second Circuit (*sub nom. United Wall Paper Factories* v. *Hodges*, 70 F. (2d) 243, L. Hand, J.) upon the ground that good cause for the default had not been shown in that case—assuming *arguendo* that the amended General Order did not take from the court the power to excuse default on good cause shown. In the instant *Reichert* case both the District Court (Judge Patterson) and the Circuit Court of Appeals for the Second Circuit (Chase, J.), held that the amendment took away all power to allow extensions. But in *Matter of Palestine* (No. 58229, unreported), Judge Knox sustained the extension, stating "* * * it is difficult for me to believe that a failure to file specifications of objections to a bankrupt's discharge will, in all circumstances, bar the subsequent filing of such specifications." In *In re Lerner*, 70 F. (2d) 988 (co-pending with the instant case on writ of certiorari, No. 292), the Circuit Court of Appeals for the Seventh Circuit held that the right of the court to extend the time was not affected by the amendment.

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granted an extension of time until noon the next day for the filing of the specifications. They were duly filed within such extended period (R. 63), and contained grave charges of wilful fraud and violations of the bankruptcy act by respondents, both prior to and in the bankruptcy proceedings (R. 14-24). When these specifications were filed the Bankruptcy Court was still in session and holding the job Bankruptcy Term.

Thereafter, on motion of the bankrupts, the court disregarded the specifications, on the sole ground that they were filed beyond the time provided by amended General Order XXXII, the court taking the view that that amendment must have been intended to put it beyond the power of the bankruptcy court to grant any extension of time whatever for the filing of the written specifications. The District Court's opinion (R. 66-67) admits that "**It may be that bankrupts not entitled by substantive law to win a discharge will get one because of the speed in procedure required of creditors under the new rule. That is a matter that the district court cannot take into account.**"

The Circuit Court of Appeals affirmed. It agreed that "we have what appears to have been good and sufficient cause for granting an extension of one day for the filing of such specifications and the question of power to grant any extension is squarely presented" (R. 74). The decision is based solely and squarely upon the view that, by deleting from General Order XXXII the provision "unless the time shall be shortened or enlarged by special order of the judge", and by inserting the requirement that the specifications shall be filed on the return day, this Court must necessarily have intended to put it beyond the power of the bankruptcy court to grant any extension whatever.

Specifications of Error.

1. The Circuit Court of Appeals erred in affirming the order of the District Court dismissing the specifications herein and granting to the bankrupts and to each of them a discharge of their debts.

2. The Circuit Court of Appeals erred in ignoring the one day extension of time granted by Judge Goddard in the District Court for the filing of the specifications.

3. The Circuit Court of Appeals and the District Court erred in holding that under General Order in Bankruptcy XXXII, as amended April 17, 1933, the District Court in Bankruptcy no longer has power to grant any extension of time for filing specifications beyond the time fixed in the rule, to-wit, the return of the order to show cause why the bankrupts should not receive a discharge.

4. The Circuit Court of Appeals erred in giving amended General Order XXXII a construction inconsistent with its language and clear intent and with cognate provisions of the Bankruptcy Law and the General Orders.

5. The Circuit Court of Appeals erred in holding, in effect, that amended General Order XXXII, when construed to prohibit the granting of any extension of time for the filing of specifications beyond the return day, was not contrary to and in conflict with the Bankruptcy Law.

Summary of Argument.

I

The primary purpose of the 1933 amendment of General Order XXXII was to deprive creditors of an absolute right to a ten-day delay between the return day and the time for filing specifications—during which unscrupulous creditors could use, and had been using, the threat of opposition to discharge in order to force bankrupts to "buy them off."

II

That purpose was fully accomplished by changing the normal time for the filing of specifications. The omission of express grant of power to allow extensions was not essential to its accomplishment, and it cannot properly be inferred therefrom that this Court intended to abrogate a power in the Bankruptcy Court theretofore well settled both under the General Order and upon general principles.

III

The amended General Order must be construed in the light of this purpose.

IV

Compelling reasons of policy require the conclusion that it was not intended to take away the Bankruptcy Court's power to grant extensions of time for the filing of specifications.

ARGUMENT.

I

The primary purpose of the 1933 amendment of General Order XXXII was to deprive creditors of an absolute right to a ten-day delay between the return day and the time for filing specifications—during which unscrupulous creditors could use, and had been using, the threat of opposition to discharge in order to force bankrupts to "buy them off."

It will be perceived that in addition to omitting the express provision for an extension of time, the General Order changes the *normal time* for the filing of specifications and requires that they shall be filed at the same time that the creditor appears in opposition to discharge, instead of ten days thereafter. We believe that the important and controlling changes in the General Order lie in the fact of the change of the normal time and of the deletion of a period which the creditor theretofore had, *as an absolute right,* during which to file specifications. While the Court's reasons for the amendment of this General Order have not been made public, the character of the change makes it quite clear that the Court had in mind the correction of the evil adverted to in the Attorney General's Report on Bankruptcy Law Practice (Senate Document No. 65, 72d Congress, 1st session) and again in the "Donovan" Report on the Administration of Bankrupt Estates (House Committee Print, 71st Congress, 3d session).

Both of these reports show that, under General Order XXXII as it stood before the amendment, unscrupulous creditors were using the period, given them *as of right* within which to file specifications in opposition to dis-

charge, in order to force bankrupts to "buy off" the opposition to discharge.

The Donovan report, commenting upon General Order XXXII as it then stood, states:

> "An unscrupulous creditor who desires to get something more than the others may be tempted to file a notice of appearance (a simple 4-line document) at the time of the hearing on confirmation, knowing that this will hold up the entire proceeding for at least another 10 days even if he does not follow up the notice of appearance with detailed specifications of objection. During this 10-day period he may hope to get paid off by the bankrupt. If the bankrupt refuses or is unable to strike a bargain, the creditor may then file his specifications of objection, so that the bankrupt will face another three weeks' delay, during the process of which he may be finally induced to come to terms" (p. 116).

The Attorney General's report states:

> "The clerks of 72 district courts reported to us that, out of the 49,928 cases closed by them in the fiscal year 1930, 27,426 applications for discharge had been disposed of. In only 1,042 of these cases individual creditors at the time of the hearing before the judge on the bankrupt's application filed notices of appearance stating that they intended to oppose the discharge. Under General Order XXXII, these creditors were then required to file specifications in writing within 10 days, setting forth the grounds of this opposition, upon the filing of which the issues would be tried. But in 330 of these 1,042 cases the creditors did not follow up their notices of appearance by filing written specifications. Why? Presumably, because the creditors were either bought off by the bankrupt as already described, or became indifferent, or were unwilling to incur further expense * * *."

The purpose to correct this evil is so clearly apparent from the form of the amendment that it seems strange that the courts which have heretofore considered the instant question have not adverted to it.[2] We believe that the failure to consider the amendment in the light of this purpose has led the courts below in this case, and other courts which have reached similar results, into error.

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[2] The only other Circuit Court of Appeals which has considered this question has held that the amended General Order does not take the power of extension away from the Court. *In re Lerner*, 70 F. (2d) 938 (C. C. A. 7, 1934), copending with the instant case on writ of certiorari. It may also be noted that Judge Knox recently refused to follow the decision rendered by Judge Patterson on this question in the instant *Reichert* case, although that case and the decisions in *In re Hodges*, 4 Fed. Supp. 804 (D. C. U. S., Conn., affirmed on the ground that good cause had not been shown—the question of *power* to extend being pretermitted—*sub nom. United Wall Paper Factories* v. *Hodges*, 70 F. (2d) 243, C. C. A. 2, 1934) and *In re Corcoran*, 4 Fed. Supp. 988 (D. C. U. S., Mass.), were called to his attention. In the *Matter of Palestine* (No. 58229, unreported) Judge Knox delivered the following opinion denying the motion to strike specifications which had been filed two days after the return day pursuant to an order of extension which had been granted upon the ground that the creditor's out-of-town attorney was unfamiliar with the recent amendment to General Order XXXII:

> "Motion denied. While the reported decisions cited by petitioner would seem to justify the relief sought, it is difficult for me to believe that a failure to file specifications of objections to a bankrupt's discharge upon the return day will, in all circumstances, bar the subsequent filing of such specifications. The matter should be decided by the appellate court. Here, there was no objection interposed in the action of the court in extending time in which to file objections—also there was no express consent by the attorney for the bankrupt."

Even after the decision of the Circuit Court of Appeals affirming the *Hodges* case, *supra*, Judge Knox reiterated his stand in the *Palestine* case by denying, with opinion, a petition for rehearing, in which the bankrupt had again attacked the extension of time. (Judge Knox's opinion on rehearing in this *Palestine* case is referred to and quoted from at pp. 17-18 *post* in this brief.)

II

That purpose was fully accomplished by changing the normal time for the filing of specifications. The omission of express grant of power to allow extensions was not essential to its accomplishment, and it cannot properly be inferred therefrom that this Court intended to abrogate a power in the Bankruptcy Court theretofore well settled both under the General Order and upon general principles.

It cannot be maintained that the evil sought to be corrected by the amendment to this General Order required that all power be taken from the bankruptcy court to allow an extension of time for the filing of specifications. If the objecting creditors must actually appear upon the return day and then either file their specifications or show good cause for a reasonable extension of time, they certainly will not be able to count upon having any time for the use of a lever to force special terms from the bankrupt.[3] It might be suggested that the omission of the express power to grant an extension must be inferred to be a prohibition of that power in order to guard against laxity by the District Judge in the granting of extensions of time. Preliminarily, it is perfectly clear that there was no laxity in the instant case. The extension granted was for one day only. There were certainly good grounds for an extension, as the Circuit Court of Appeals in its opinion admits. If lax-

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[3] The Bankruptcy Rules of the District Court of the United States for the Southern District of New York supply an additional safeguard against this in providing in Rule XIX: "In the event of any withdrawal of such opposition, no discharge shall be granted unless the bankrupt and his attorney make affidavit that no consideration has been promised or given for such withdrawal. If specifications be withdrawn or appear not to be prosecuted in good faith, the Special Master shall inquire and report to the Court as to whether the opposition ceased by reason of illegal or improper acts."

These rules became effective July 1, 1931, prior to the amendment of General Order XXXII.

ity in the administration of the Bankruptcy Rules and Orders was feared, certainly some less drastic provision could have been made. It may well have been provided that extensions should not be granted by the referee, but only by the court itself, and only after a full hearing and a showing of good cause, and that they should be limited in point of time. If thought necessary, such views can now be expressed by this Court.

But entirely to abrogate any power of extension not only seems unnecessary, but seems to be inconsistent with views this Court has recently expressed in other fields. As this Court is aware, bankruptcy cases are often complex, and creditors are frequently able to learn the true facts only with difficulty. See *Cooper* v. *Dasher*, 290 U. S. 106, 109. Special circumstances, such as the illness of important creditors or witnesses, may require special treatment. In *Pokora* v. *Wabash Ry. Co.*, 292 U. S. 98, 105, 106, this Court adverted to the impropriety of laying down inflexible standards of conduct, which amount to rules of law. Said Mr. Justice Cardozo, speaking for the Court:

> "Illustrations such as these bear witness to the need for caution in framing standards of behavior that amount to rules of law. * * * Extraordinary situations may not wisely or fairly be subjected to tests or regulations that are fitting for the common-place or normal."

And, with specific reference to the question of the amendment of pleadings, this Court, in the *Claims Amending* cases, has recently rendered most liberal decisions. *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, 68; *United States* v. *Factors & Finance Co.*, 288 U. S. 89, 93.

These considerations lead to the conclusion that there is no *reason* for drawing the inference which has been drawn

by the courts below from the mere omission from the amended Order of the express grant of the power to allow extensions. Explanation for the omission may be found in the fact that such a grant is entirely unnecessary, for the bankruptcy courts in the absence of a prohibition already possess such power. This explanation of the omission has recently been advanced in the latest edition of a standard text on bankruptcy. Remington on Bankruptcy, 4th Ed., Vol. 7, sec. 3201, p. 427 (1934), says:

> "Although the express permission of former General Order 32 that the time for filing specifications in opposition to the discharge might be shortened or enlarged by special order of the judge was eliminated when the Supreme Court amended the General Order in 1933, yet it cannot rightly be inferred from such change that the general power of courts to grant extension of time in remedial matters is in this particular abrogated; indeed, the retention of the requirement that appearance in opposition must be entered in writing on the return day, while at the same time, it is prescribed that specifications in writing are to be filed also on the return day, would carry the necessary implication that, on occasion, an extension of time to file the specifications might be granted; otherwise there would not be the double requirement of the entry of appearance on the return day and of the filing of the specifications on the same day, since the specifications themselves would constitute the most positive form of entry of appearance in opposition. *Perhaps the expressing of the power to grant such extension was eliminated precisely because unnecessary.*" [Emphasis ours.]

Specifications in opposition to a discharge in bankruptcy are pleadings, (*Manson* v. *Inge*, 13 F. (2d) 567-568 (C. C. A. 4, 1926); *In re Scheffler*, 68 F. (2d) 902, 903 (C. C. A. 2, 1934); *In re Lerner*, 70 F. (2d) 938 (C. C. A. 7, 1924); *cf.*

Tucker v. *U. S.*, 151 U. S. 164, 168) and Federal courts, including courts of bankruptcy, have an inherent power to grant an extension of time for the filing of pleadings. Remington on Bankruptcy, *supra; Strohbar* v. *Dwinnell,* 29 F. (2d) 915, 916 (C. C. A. 5, 1929); see *Lockman* v. *Lang,* 132 Fed. 1, 6 (C. C. A. 8, 1904, per Sanborn, J.).

The lack of necessity for an express provision in General Order XXXII giving the Bankruptcy Court power to allow an extension of time is shown not merely by the fact that the court would have inherent power in any event to do so, but by the fact that the bankruptcy courts are already given this power by a provision of the Bankruptcy Act and by the provision of another General Order. Section 2 (15) of the Bankruptcy Act (11 USC 11(15)) gives the courts of bankruptcy power to:

> "• • • make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act."

And General Order XXXVII provides that:

> "• • • the judge may, by special order in any case, vary the time allowed for return of process, for appearance and pleading • • •."

It seems clear that under Section 2 (15) of the Act the bankruptcy court would have power to make an order of extension on the facts of this case, irrespective whether that power is expressly granted by any General Order. One of the purposes of the Bankruptcy Act, as expressly shown by Section 14 (b) (11 USC 32 (b)), is to refuse discharges to dishonest bankrupts guilty of fraud as specified in that section. The specifications in opposition to discharge in this record, and the testimony of record (R. 14) clearly show that these bankrupts have been charged

with, and, as we think, are guilty of, the grossest fraud. Good cause for an extension of time (the serious illness of the president of the objecting creditor and his non-availability to authorize the execution and filing of specifications containing such serious charges; the complexity of the case; and the difficulty of ascertaining the true facts) was shown. The extension was granted for but one day. Can it seriously be urged that it is not within the intent of the quoted provision of Section 2 (15) of the Bankruptcy Act to give the bankruptcy courts the power to make such an extension in such a case in order to enforce the very purposes of the Act? The 1933 amendment of General Order XXXII should be construed in harmony with the fair intent of Section 2 (15) of the Bankruptcy Act.

III.

The amended General Order must be construed in the light of this purpose.

The intention of this Court in framing and promulgating General Order XXXII is the governing question. It has been thoroughly settled since the time of Bacon (Bacon Abridgement, Statutes I, 5, 6) that the intention of the law makers is governing; that a thing which is within that intention is as much within the statute as if it were within the letter, and that a thing within the letter is not within the statute unless it be within the intention of the law makers; and that where the law makers do not use language necessarily covering the case before the court, it is the duty of the court to ask itself what answer the law makers would have made had they posed the specific question, and then to construe the statute as it shall answer such question.

These principles have had abundant and reiterated approval and support both from this Court[4] and from the State Courts.[5]

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[4] Among the many cases of this Court approving these principles there may be cited *Helvering* v. *New York Trust Co.*, 292 U. S. 455, 464, 465; *Ozawa* v. *U. S.*, 260 U. S. 178, 194; *Barrett* v. *Van Pelt*, 268 U. S. 85, 90, 91; *Hawaii* v. *Mankichi*, 190 U. S. 197, 212; *Smythe* v. *Fiske*, 23 Wall. 374, 380.

[5] The leading case in this country is the New York case of *People* v. *Utica Insurance Co.*, 15 Johns. 358, 381, a decision which has been approved repeatedly by this Court, see cases cited in note 4, *ante*. These principles have been reiterated and applied to scores of cases up to the present day. Among recent decisions which may be mentioned are *City Bank F. T. Co.* v. *N. Y. C. R. R. Co.*, 253 N. Y. 49, 57 (1930) and *Surace* v. *Danna*, 248 N. Y. 18, 21 (1928), both by Chief Judge (now Mr. Justice) Cardozo.

In the *City Bank* case it was said:

> "In the construction of a statute, adherence to the written word will not be suffered to 'defeat the general purpose and manifest policy intended to be promoted' (*Spencer* v. *Myers*, 150 N. Y. 269, 275; *Surace* v. *Danna*, 248 N. Y. 18, 20. The intent, when discovered, will prevail over the letter (*Smith* v. *People*, 47 N. Y. 330, 336; *People ex rel. Jackson* v. *Potter*, 47 N. Y. 375, 379; *Bell* v. *Mayor*, 105 N. Y. 139, 144; *Blaschko* v. *Wurster*, 156 N. Y. 437, 442)."

If, therefore, the express language of a statute will not be permitted to defeat or go beyond the intention of its framers, it is self-evident that a mere inference drawn from the deletion of language from a statute will not be suffered to govern when the intention is clearly shown. These principles should be applied to the construction of the General Order here in question, in the light of the situation which confronted the court at the time of the revision of the General Orders and in the light of the evil intended to be suppressed and of the measures necessary for effective suppression.

In the *Surace* case it was said:

> "The exemption must have a meaning consistent with the policy behind it. Few words are so plain that the context or the occasion is without capacity to enlarge or narrow their extension. The thought behind the phrase proclaims itself misread when the outcome of the reading is injustice or absurdity (*Smith* v. *People*, 47 N. Y. 330, 341, 342; *Matter of Meyer*, 209 N. Y. 386, 389). Adherence to the letter will not be suffered to 'defeat the general purposes and manifest policy intended to be promoted' (*Spencer* v. *Myers*, 150 N. Y. 269, 275; *People ex rel. Wood* v. *Lacombe*, 99 N. Y. 43; *Matter of Folsom*, 56 N. Y. 60, 66; Kent's Comm. 462)."

IV.

Compelling reasons of policy require the conclusion that it was not intended to take away the Bankruptcy Court's power to grant extensions of time for the filing of specifications.

The reasons of policy, heretofore referred to in this brief, which require that the bankruptcy courts shall have the power of extension, are that it is necessary to have the power to take care of exceptional cases, where through the illness or unavoidable absence of an important creditor or witness, or where counsel for objecting creditors cannot secure essential information or authority, or where through the complexities of the case or the machinations of the bankrupt, or both, definite information cannot promptly be obtained.

There is, however, another important reason of policy against the construction which has been given to amended General Order XXXII by the courts below in this case. There is nothing in the Bankruptcy Act or in the General Orders to prevent the District Judge from adjourning the return date of the rule to show cause for all purposes and thereby adjourning the whole discharge proceeding. When such a motion is granted, the specifications, of course, are not due to be filed until the adjourned return date. Many applications for such adjournments have been presented in the district courts in the Second Circuit and have been granted when good cause was shown by objecting creditors.[6] As stated by Judge Knox in the recent unreport-

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[6] There have been numerous cases, but for reference purposes it is sufficient to refer to

Matter of Brownstone (No. 51039, unreported);
Matter of Horn (No. 59116, unreported);
Matter of Bernstein (No. 57099, unreported).

Indeed, at an earlier stage of this case, there was an adjournment of the return date on the opposition to discharge granted by agreement.

ed case of *Matter of Palestine* (No. 58229, unreported):

> "The matter of the right of the court to exercise its discretion with respect to adjourning the application for discharge for all purposes is constantly arising, as well as the right of the court to grant extension for the reasons which appeal to its sense of justice."

The conclusion seems justified that if the district judges generally find no means of avoiding such an interpretation of General Order XXXII as will amount to a denial of justice and a great hardship to objecting creditors, they will adopt the method which has already been put into practice in the district courts in the Second Circuit and grant an adjournment of the return day and of the whole discharge proceeding for all purposes. But such a procedure, it should be borne in mind, may, in some cases, work an injustice upon the bankrupt, for if the return day is adjourned, additional creditors may appear and file specifications other than those who appeared, or were ready to appear, on the original return day. It would seem to be preferable, we submit, to conclude that it is impossible that this Court could have intended by the 1933 amendment of General Order No. XXXII to have put into force a rule plainly calculated to work injustice and which in practice has done so;[7] that it would be better to construe the General Order as not intended to prevent the grant of such extensions of time to file specifications upon good cause shown, rather than have such extensions accomplished cumbrously and circuitously.

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[7] In *Hawaii* v. *Mankichi*, 190 U. S. 197, 214, and again in *Sorrells* v. *United States*, 287 U. S. 435, 448, 468, the Court referred with approval to the following language of the Master of the Rolls (afterwards Lord Esher) in *Plumstead Board of Works* v. *Spackman*, L. R. 13 Q. B. D. 878, 887:

> "If there are no means of avoiding such an interpretation of the statute," (as will amount to a great hardship,) "a judge must come to the conclusion that the legislature by inadvertence has committed an act of legislative injustice; but to my mind a judge ought to struggle with all the intellect that he has, and with all the vigor of mind that he has, against such an interpretation of an act of Parliament; and, unless he is forced to come to a contrary conclusion, he ought to assume that it is impossible that the legislature could have so intended."

Conclusion.

We submit, therefore, that the suppression of the evil to be feared is fully accomplished by the express language of the General Order as amended—that is, by removing the provision giving a ten day period as of right during which unscrupulous creditors may use threats to force special treatment of them; that the suppression of that evil did not require the abrogation of the power of the bankruptcy courts to grant reasonable extensions upon good grounds shown; that the express grant of such powers was omitted because such a grant was unnecessary; that there is nothing to indicate that this Court intended to place any restrictions upon the bankruptcy courts in this regard; that such a restriction would be inconsistent, if not in conflict, with a provision of the Bankruptcy Act and another provision of the General Orders; that it would amount to the announcement of an arbitrary rule not consonant with the decisions of this Court; and that it might lead, and indeed has led, to subterfuges to avoid the rule in hard cases, which might well prove more dangerous than recognition of the power itself.

It is respectfully submitted that the orders of the Circuit Court of Appeals and of the District Court (Judge Patterson) in this case should be reversed, and that the validity of the order of Judge Goddard in granting the extension of time should be sustained.

HOWARD MYERS,
JOSEPH K. GUERIN,
SAUL S. MYERS,
Counsel for Petitioner.